COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS & ENERGY

INVESTIGATION BY THE	)	
DEPARTMENT OF	)	
TELECOMMUNICATIONS AND	)	
ENERGY COMMENCING A	)	D.P.U./D.T.E. Docket 96-100
RULEMAKING ESTABLISHING	)	
PROCEDURES TO BE	)	
FOLLOWED IN ELECTRIC	)	
INDUSTRY RESTRUCTURING	)	

COMMENTS OF BOSTON EDISON COMPANY

I. INTRODUCTION

On January 16, 1998, the Department of Telecommunications & Energy ("Department" or "DTE") issued proposed regulations concerning the implementation of electric industry restructuring pursuant to its authority set forth in the Electric Industry Restructuring Act, Chapter 164 of the Acts of 1997 (the "Act"). In accordance with the schedule set forth by the Department, Boston Edison Company ("Boston Edison" or "the Company") hereby submits for the Department's consideration the following comments regarding the proposed regulations.

In accordance with the Department's invitation to interested persons with similar interests to make joint filings, and in an effort to streamline the Department's review and implementation of the proposed regulations, Boston Edison Company has met with representatives of Cambridge Electric Light Company, Commonwealth Electric Company, Eastern Edison Company, Fitchburg Gas and Electric Light Company, Massachusetts Electric Company, Nantucket Electric Company, and Western Massachusetts Electric

Company (collectively, the "Utility Companies") to discuss the proposed regulations. As a result of these discussions, the Utility Companies were able to prepare a redlined/strikeout version of the Department's proposed regulations, indicating suggested revisions thereto. These have been filed under separate cover on behalf of the Utility Companies by Western Massachusetts Electric Company. Due to the limited time available, the Utility Companies were not able to fully develop joint comments and therefore, Boston Edison is submitting the following comments on its own behalf.

II. GENERAL COMMENTS

In general, the Company concurs with the proposed regulations and, except in a small number of instances, the Utility Companies' proposed revisions offer only textual changes designed to clarify the language offered by the Department or to make the regulations more closely comport with specific wording of the Act. Boston Edison Company applauds the Department's effort to develop the myriad of regulations and provide the regulatory approvals that are necessary to implement the Act and allow retail competition in the electricity generation market to commence beginning March 1, 1998. The Company believes that the proposed regulations issued by the Department are an excellent starting point that will enable the restructuring process to move forward. The Company notes, however, that due to the many complex issues associated with the commencement of retail competition, further refinement of these regulations may be necessary in the future.

Although specific comments with regard to certain proposed revisions follow below, the Company wishes to first address a few matters of general concern. First, the Company notes the massive and onerous amount of detail required by some of the Department's proposed regulations, including the provisions relating to information disclosure requirements, and in particular, the labeling requirements set forth in Section 11.06(2). The difficulty in complying with such regulations is compounded by the extremely short time remaining prior to March 1, the retail access date.

Secondly, the Company is concerned that the burdensome nature of certain of the proposed regulations, especially the competitive supplier requirements that essentially require new market entrants to comply with the full panoply of regulations included in 220 CMR 25.00, as required pursuant to Sections 11.05(3)(b) and 11.05(6), could have a deleterious effect on the implementation and success of retail competition. The Company believes that the promulgation and implementation of these regulations, as well as additional future regulations to implement retail access, should serve to foster the development of the competitive market, rather than to impede it. This is obviously not only of crucial importance to Competitive Suppliers, but also to regulated Distribution Companies, such as Boston Edison, as they look to the future where their customers will be off of Standard Offer service and served through the competitive market. Accordingly, while the Company strongly supports all necessary consumer protections, it is appropriate to proceed cautiously in the development of regulations to ensure that they are not overly restrictive as to participants in the new competitive marketplace.

Thirdly, in reviewing the proposed regulations, the Company notes that they have a substantial degree of overlap with matters that are at issue in the restructuring plan filings of individual electric utilities. As discussed in greater detail below, in the case of plans filed prior to the implementation of the Act, the Legislature endorsed the concept that the Department had the flexibility and discretion to determine whether such plans are consistent or substantially comply with the provisions of Chapter 164. Accordingly, it is essential that regulations promulgated by the Department to implement Chapter 164 also endorse the concept of substantial compliance. We have proposed specific language to accomplish this objective in key sections, and have also proposed a general "exceptions" provision, similar to provisions that the Department has included in other complex and prescriptive regulations.

III. SECTION-BY-SECTION COMMENTS

Many of the Utility Companies' proposed revisions are self-explanatory, and accordingly, are not specifically addressed. The comments set forth below are limited to a section-by-section commentary that describes the most significant changes proposed by the Utility Companies.

A. Section 11.02: General Definitions

Several changes are proposed in various definitions. In all cases we believe the revisions are intended to conform the definitions to those contained in the Act or to retain consistency in defined terms which are capitalized in the regulations.

B. Section 11.03: Transition Cost Recovery

1. Section 11.03(2)(b) Company Asset Valuation

The Company proposes changing this section to clarify that, consistent with G.L c. 164, § 1A(b), an Electric Company is not required to transfer or separate ownership of Generation, Transmission, and Distribution Facilities, but also has the option to functionally separate such facilities.

2. Section 11.03(3)(a) Transition Charge Calculation and Department Review

The Company proposes revising this section by including the notion of "substantial compliance" as set forth in the Act. Pursuant to the Act, the Department may determine whether the transition cost provisions of a restructuring plan are consistent or substantially comply with the provisions of Chapter 164 of the General Laws. It is essential that this concept be taken into account by the Department with respect to transition costs. The Department has clearly embraced this concept in its recent orders approving the restructuring plans of Massachusetts Electric Company, Eastern Edison Company and Boston Edison Company, and the suggested revision is intended to conform these regulations to the Act and the Department's orders issued pursuant to the Act.

Provided that the suggested revision addressing "substantial compliance" is added to this section, Boston Edison has not sought to suggest detailed revisions to the remaining provisions of 220 CMR 11.03. We note that they substantially track the provisions of the Act, however it would clearly be impossible to address in regulations of reasonable length and clarity each and every provision or exception embodied in the Act. The Act itself addresses many subjects, such as mitigation or securitization or purchased power contracts, in more than one place and occasionally with slightly varying terminology. Clearly the Act must be read as a whole and provisions regarding a subject, such as mitigation, that appear in one section frequently need to be read in conjunction with other provisions related to mitigation in a later section. Similarly, the proposed regulations regarding transition costs must at all times be read in conjunction with the Act and, whether explicitly stated or not, statutory provisions respecting a particular subject must prevail over a regulation which only addresses one part of the overall statutory scheme.

In this regard, and although we have not thought it necessary to insert specific language changes, we would note several specific instances where this issue arises within the proposed regulations. One such instance concerns mitigation as it relates to “assets not classified to the transmission or distribution function.” See 220 CMR 11.03(1)(g) and 11.03(2)(a)(4). Neither section explicitly addresses the requirement stated in the definition of “mitigation” in the Act (and repeated in the definition section of these proposed regulations) that the “costs associated with the acquisition of those assets have been reflected in the Distribution Company’s rates for regulated service.” Since the provision is included in the definition, we have less concern, however the naked statement of the documentation requirement clearly could be misleading if not understood to include the “reflected in rates” limitation.

Concerns of a similar nature have been raised concerning divestiture “proceeds” (220 CMR 11.03(2)(b)(1)(a)) and purchased power contracts (220 CMR 11.03(2)(c)), insofar as the specific language in the proposed regulations draws from one particular statutory provision and does not always reflect specific limitations or clarifications contained in the other sections of the Act. In the case of “proceeds” the concern is that such proceeds are clearly “net” proceeds, which is explicitly clarified in G.L. c. 164, § 1G(d)(1)(i) although it is less explicitly stated in the proposed regulation. In the case of purchased power contracts, it is clear, as discussed in our comment on 220 CMR 11.05(2)(b)(11), that not all such contracts are subject to the renegotiation requirements of the Act, and thus the proposed regulatory provision must be read in conjunction with the Act.

C. Section 11.04: Distribution Company Requirements

1. Section 11.04(5) Low-Income Customer Tariff

The Company suggests that Section 11.04(5)(a) be changed to require that Low-income Customers be billed through a single bill from the Distribution Company. This change is required in order to audit charges and payments required by the guarantee provisions in 220 CMR 11.04(5)(e). While the Company clearly endorses the concept of such a guarantee consistent with the Act and our Settlement Agreement, there can be a significant financial effect if such a mechanism were misused.

The Company also proposes a change to Section 11.04(5)(e) to make it consistent with the terminology of other subsections in describing the class of Low-income Customers to whom the provision applies. This is particularly important since in this case it serves to clarify exactly for whom the Distribution Companies will be required to guarantee payment, in this case R-2 Rate, Low- income Customers, an issue of obvious importance to all concerned. Finally, although not the subject of a specific proposed revision, the Company also suggests that the guarantee of payment apply only once to any specific customer/supplier relationship. We feel that there could be significant gaming opportunities in the present proposal, so as to defeat the intention of the guarantee of payment to Competitive Suppliers.

2. Section 11.04(6) Farm Discount

The Company suggests adding a requirement that reasonable proof of eligibility for the farm discount be provided to the Distribution Company. This would allow Distribution Companies to define eligibility pursuant to applicable definitions contained in the General Laws and as applied by other state and municipal agencies. In the alternative, the Company would welcome an eligibility requirement set by the Department. In either event, a proof of eligibility requirement would reduce confusion and avoid potential abuse.

3. Section 11.04(7)(d) Net Metering

The Utility Companies have suggested the deletion of this provision. As an initial matter we note that the provision is inconsistent with the Department's existing regulations at 220 CMR 8.04. Also we question the interpretation of the recent restructuring legislation insofar as it may be thought to require an increase in the maximum size of on-site generation facilities eligible for net metering. The only provision in the legislation that addresses net metering is the newly added G.L. c. 164, § 1G(g), which clearly, by its terms, is limited to a restriction upon the imposition of an exit charge. For this to be converted into an affirmative requirement, contrary to the Department's existing regulations, in an expedited proceeding designed to address items that must be addressed prior to open access, is a misuse of the expedited process.

There are significant issues associated with net metering in the context of the new industry structures and roles being undertaken as a result of industry restructuring. Distribution companies are leaving the generation business but see their obligation to purchase power being increased. In addition, there are significant by-pass issues that are potentially present. Our suggestion is that this issue be reserved for a separate proceeding which can address these and other important issues. We believe that the specific legislative requirements can be addressed through regulatory provisions or individual company tariffs relative to exit charges. If a regulatory provision is necessary in this section dealing with "renewables" (obviously there is nothing about on-site generation which limits the energy sources to "renewables"), then we suggest only a provision which narrowly tracks the words of the legislation regarding exit fees.

4. Section 11.04(9)(a) Standard Offer Generation Service and Default Generation Service

The proposed revision to this section provides the statutory language regarding restructuring plans that substantially comply or are consistent with G.L.c. 164. The wording is virtually the same, as are the reasons, as discussed above in connection with Section 11.03(3)(a). Although the provisions regarding substantial compliance may apply very generally to restructuring plans, we believe that Section 11.03 and this section are the two primary places the issue arises in these proposed regulations.

5. Section 11.04(9)(b)4 Standard Offer Generation Service Procurement

The proposed change in this section provides the Department with the necessary discretion to review the scheduling and terms of the competitive bidding process to procure Standard Offer Generation Service. The Distribution Companies have filed, or will file, with the Department, plans which identify the schedule and the terms under which they are proposing to secure this generation service for customers. In fact the Department recently approved the Company's plan for competitive bidding of standard offer service, including the schedule and terms, in DPU 96-23. This proposed change is intended to conform this provision to the Department's orders issued pursuant to the Act.

6. Section 11.04(9)(c)3 Default Generation Service Procurement

Similarly, with respect to the procurement of Default Generation Service, the proposed change in this section provides the Department with the necessary discretion to review the scheduling and terms of this service. The Company's intent is to ensure that the bidding process is as competitive as possible to secure the lowest possible default generation service cost. At this time Generation Companies are not yet able to bid generation products to the ISO and accordingly, the ISO is not yet able to establish markert clearing prices. The Company believes that the participation response will be substantially limited if an RFP is issued for the period of time which encompasses both the present and the time when the ISO has commenced publishing market prices for all seven generation products. The proposed revision to this section of the regulations would enable the Department to require Distribution Companies to file plans which identify the schedule and the terms under which they are proposing to secure this generation service for customers and to identify a contingency plan whereby the Distribution Company could, if appropriate, purchase directly from the ISO.

C. Section 11.05: Competitive Supplier Requirements

1. Section 11.05(2)(b) Information Filing Requirements

The Company believes that this provision potentially requires documentation of "renegotiation efforts" for contracts not subject to the renegotiation requirements of G.L.c. 164, §1G(d)(2). Section 1G(d)(2(i) explicitly limits the applicability to "purchased power contracts approved by the department on or by December 31, 1995" and also exempts trash burning facilities. In addition, Section 1G(d)(2(i) explicitly limits the applicability of the non-licensure restriction to situations involving contracts of the "seller", rather than including those of affiliates. The revised language proposed by the Utility Companies retains the general documentation requirement for all contracts of the Applicant and its affiliates (consistent with Section 1F(1)(i)) while limiting the renegotiation documentation requirement to the smaller set of contracts referred to in Section 1G(d)(2).

2. Section 11.05(5) Conducting Business with Unauthorized Entities

As written, this provision sets up an impossible requirement, as there may not be sufficient information readily available for Distribution Companies, Competitive Suppliers, and Electricity Brokers to make the necessary assessment. Furthermore, as written, the provision is overly broad. For example, Distribution Companies obviously can do certain types of business with unlicensed Competitive Suppliers and Electricity Brokers, but can only engage in business activities regulated pursuant to 220 CMR 11.00 with entities which are licensed by the Department. Inadvertent violations of this provision could be avoided by the proposed change in this provision.

D. Section 11.06: Information Disclosure Requirements

While the Company is supportive of the intent of consumer education, as discussed in our general comments, the requirements regarding the information disclosure label are a matter of some concern both from the standpoint of the detail (and resulting burden) required in developing the label and also from the immediacy of the requirement becoming effective on March 1, 1998. The suggested revisions in this section address both of those issues by suggesting both a delay in the start date for the distribution of labels and also by suggesting that there might be some distinction in the level of detail between competitive offerings (which may involve specific marketing claims, and are otherwise unregulated) and fully regulated offerings which involve no such marketing claims. We do not suggest that no label be required in the case of regulated offerings, but there might be a different level of need for information. One idea we would particularly like to see explored is the use of a single label, representative of the regional generation mix, that could be used for regulated offerings served primarily from regional spot markets.

Terms of Service disclosure requirements, we believe, are covered in existing Customer Terms and Conditions, therefor require no additional disclosure. In addition, each Distribution company will require time to evaluate its ability to accomplish the physical aspect of distribution of disclosure information. Current technology may make it impossible to distribute the required information in the manner intended by the Department. The Department should also be aware of the additional postage costs involved with significant mailings and potential increased postage with bill stuffers or additional bill pages, which double after the one- ounce threshold is exceeded.

E. Section 11.08: Exceptions

The Company suggests adding this section which permits the Department to grant exceptions to these regulations, where appropriate. The flexibility provided to the Department by this standard regulatory provision (which is identical to provisions in 220 CMR 8.00 and 220 CMR 10.00) is essential in light of the complexity of industry restructuring and the newness of open access.

IV. CONCLUSION

We appreciate the opportunity to offer these comments and respectfully request the Department to incorporate the proposed revisions suggested by the Utility Companies in their joint filing.

Respectfully Submitted,

BOSTON EDISON COMPANY
by its attorneys

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